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7

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF SAN MATEO**

11 SIX4THREE, LLC, a Delaware limited liability
12 company ,

13 Plaintiff,

14 v.

15 FACEBOOK, INC., a Delaware corporation and
16 DOES 1-50, inclusive,

17 Defendants.

Case No.: CIV 533328

**Assigned for all purposes to Hon. V.
Raymond Swope, Dept. 23**

**BIRNBAUM & GODKIN, LLP'S
OBJECTION TO COURT SETTING
DISCOVERY CONFERNECE ON MAY 3,
2019**

Date: May 3, 2019
Time: 2:00 p.m.
Dept.: 23 (Hon. V. Raymond Swope)

FILING DATE: April 10, 2015
TRIAL DATE: April 25, 2019

22
23 Pursuant to Case Management Order #1 in this matter, Counsel for Birnbaum & Godkin, LLP,
24 will and hereby does object to the Court's May 1, 2019 order setting a discovery conference on May 3,
25 2019 in violation of Case Management Order #1, paragraph 11 and in violation of Birnbaum & Godkin's
26 Due Process rights.
27

1
2 **1. Case Management Order #1 Prohibits the Scheduling of a Discovery Conference
3 With Less Than 5 Days' Notice**

4 Counsel for Birnbaum & Godkin, LLP hereby objects to the court setting a discovery conference
5 for this Friday, May 3, 2019. Setting the hearing with less than 5 days' notice directly violates Case
6 Management Order #1 ("CMO #1"), which states:

7 At the time or prior to submitting the letter briefs, counsel for the parties
8 shall also schedule a discovery conference with the Court to occur no
9 sooner than five court days after delivery of the last letter brief to the
10 Court.

11 CMO #1, paragraph 11.

12 The court only provided notice of the May 3, 2019 hearing for the first time in an email sent to
13 the parties today, May 1, 2019. (Exhibit A).

14 Opposing counsel, Durie Tangri, submitted their letter brief for the purposes of a discovery
15 conference originally scheduled for April 26, 2019. (Exhibit B). However, opposing counsel submitted
16 the letter brief *after* the First District Court of Appeal ordered a stay on all discovery proceedings in this
17 matter. (Attachment C). As a result, the August 26, 2019 discovery conference was taken off calendar.

18 Today, on May 1, 2019, opposing counsel requested permission to file an *ex parte* application to
19 re-set the previously cancelled discovery conference for some date before May 15, 2019. In response,
20 the court *sua sponte* set the discovery conference for May 3, 2019 and ordered the parties to submit their
21 respective letter briefs by tomorrow, May 2, 2019 at 9:00 a.m. – on less than 24 hours' notice.

22 Birnbaum & Godkin, LLP objects to the setting of the discovery conference on such short notice
23 on the grounds that it violates the Case Management Order #1 which specifically mandates that such a
24 discovery conference shall not be scheduled with less than 5 days' notice to the parties.

25 **2. Setting the Discovery Conference In Violation of the Case Management Order #1's
26 Notice Requirement Is A Violation of Birnbaum & Godkin, LLP's Due Process
27 Rights**

1 The subject matter of the discovery conference involves a dispute regarding a subpoena issued
2 in the state of Massachusetts and served on David Godkin in Massachusetts. The subpoena was served
3 by an agent of opposing counsel based in Massachusetts. Given the venue, Mr. Godkin's objections to
4 the Massachusetts subpoena were prepared and filed in Massachusetts by Mr. Godkin's Massachusetts
5 counsel, Mr. Steve Bolotin. As such, Mr. Bolotin is the only attorney who may properly address the
6 discovery disputes related to the Massachusetts subpoena at the discovery conference at issue.

7 In spite of Mr. Bolotin's proper identification as counsel for Birnbaum & Godkin, LLP, this court
8 omitted Mr. Bolotin from the email notice regarding the setting of the discovery conference for May 3,
9 2019. In doing so, the court not only violated the clear notice requirements set forth in Case Management
10 Order #1, the court also violated Birnbaum & Godkin, LLP's due process right to fair and proper notice
11 of the hearing date by purposefully excluding Massachusetts counsel – the only counsel able to address
12 the Massachusetts subpoena at issue.

13 Additionally, the court's order that letter brief's be submitted on less than 24 hours' notice is a
14 further violation of Birnbaum & Godkin, LLP's due process rights as such a timeframe provides
15 insufficient time for Massachusetts counsel to prepare a letter brief on behalf of Birnbaum & Godkin,
16 LLP.

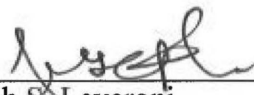
17 CONCLUSION

18 For the forgoing reasons, Birnbaum & Godkin, LLP object to the court's setting of the discovery
19 conference on May 3, 2019.

20
21 DATED: May 1, 2019

MURPHY, PEARSON, BRADLEY & FEENEY

22
23
24 By


Joseph S. Leveroni
Attorneys for Defendant
BIRNBAUM & GODKIN, LLP

25
26 JSL.3327460.docx

EXHIBIT A

From: ComplexCivil <complexcivil@sanmateocourt.org>
Sent: Wednesday, May 1, 2019 10:36 AM
To: Catherine Kim; ComplexCivil; Rebecca Huerta
Cc: SERVICE-SIX4THREE; sgross@grosskleinlaw.com; Donald.Sullivan@wilsonelser.com; Joyce.Vialpando@wilsonelser.com; Dea.Palumbo@wilsonelser.com; jrusso@computerlaw.com; csargent@computerlaw.com; godkin@birnbaumgodkin.com; kruzer@birnbaumgodkin.com; James Murphy; James Lassart; Thomas Mazzucco; Joseph Leveroni; ted@six4three.com
Subject: RE: Six4Three v. Facebook et al., CIV 533328 - Request to file ex parte application

Per CM order no. 1, paragraph 11, a discovery conference is set for **Friday, May 3, 2019 at 2 p.m.** in Department 23 - an ex parte application is not required.

Discovery letter briefs of no more than 7-pages shall be sent via email no later than **Thursday, May 2, 2019 at 9 a.m.**

No exhibits are to be appended to the discovery letter briefs for this specific discovery conference.

Also, please note that the Court has deleted the email addresses relating to Morris & Mahoney. No attorney from that firm has appeared on behalf of any party or person before the Court. They shall not be included in communications with the Court or on service lists until a notice of association or substitution of counsel is filed and served.

From: Catherine Kim <CKim@durietangri.com>
Sent: Wednesday, May 1, 2019 9:56 AM
To: ComplexCivil <complexcivil@sanmateocourt.org>; Rebecca Huerta <rhuerta@sanmateocourt.org>
Cc: SERVICE-SIX4THREE <SERVICE-SIX4THREE@durietangri.com>; sgross@grosskleinlaw.com; Donald.Sullivan@wilsonelser.com; Joyce.Vialpando@wilsonelser.com; Dea.Palumbo@wilsonelser.com; jrusso@computerlaw.com; csargent@computerlaw.com; ecf@computerlaw.com; godkin@birnbaumgodkin.com; kruzer@birnbaumgodkin.com; SBolotin@morrisonmahoney.com; Llombard@morrisonmahoney.com; James Murphy <JMurphy@MPBF.com>; James Lassart <JLassart@MPBF.com>; Thomas Mazzucco <TMazzucco@MPBF.com>; Joseph Leveroni <JLeveroni@MPBF.com>; ted@six4three.com
Subject: Six4Three v. Facebook et al., CIV 533328 - Request to file ex parte application

Dear Ms. Huerta,

Facebook hereby requests leave to apply *ex parte* for an order setting a discovery conference no later than May 15, 2019, to address the following discovery disputes identified in Facebook's April 19, 2019 letter brief: the disputes pertaining to Facebook's subpoena to Mr. Gross; Facebook's subpoena to Mr. Godkin; service of Facebook's subpoena to Mr. Scaramellino; Mr. Dehaye's failure to comply with the Court's Case Management Order No. 19; and the forensic examination protocol (the relevant individuals are represented by counsel).

This notice is being sent in accordance with California Rule of Court 3.1204. This notice is being sent to Mr. Kramer as Plaintiff Six4Three, LLC's agent for service of process. This notice is also being sent to Mr. Russo and Mr. Sargent in their capacity as personal counsel for Mr. Kramer. If Six4Three,

LLC has retained new counsel, we request that Six4Three, LLC promptly forward this notice to its new counsel and send us contact information for counsel.

Respectfully,

Cat Kim | Durie Tangri LLP | ckim@durietangri.com | 415-376-6434

EXHIBIT B

From: Zachary Abrahamson <ZAbrahamson@durietangri.com>
Sent: Friday, April 19, 2019 7:26 PM
To: ComplexCivil; Rebecca Huerta
Cc: SERVICE-SIX4THREE; sgross@grosskleinlaw.com; jrusso@computerlaw.com; csargent@computerlaw.com; ecf@computerlaw.com; godkin@birnbaumgodkin.com; kruzer@birnbaumgodkin.com; SBolotin@morrisonmahoney.com; Llombard@morrisonmahoney.com; Donald.Sullivan@wilsonelser.com; Joyce.Vialpando@wilsonelser.com; Dea.Palumbo@wilsonelser.com; James Murphy; James Lassart; Thomas Mazzucco; Joseph Leveroni
Subject: Six4Three v. Facebook, CIV-533328: Facebook Letter Brief re: 4/26/19 Discovery Conference
Attachments: 2019.04.19 FINAL FB Letter Br re 4_26 Disc Conf_circ.pdf

Ms. Huerta and counsel,


Pursuant to Case Management Order No. 1, Facebook hereby delivers its letter brief in advance of the Court's April 26, 2019 discovery conference. Courtesy copies will be delivered on Monday morning.

Zachary G.F. Abrahamson | Durie, O'Connor LLP | zabrahamson@durietangri.com | (415) 376-6485

EXHIBIT C

Appellate Courts Case Information

1st Appellate District

Change court 

Court data last updated: 05/01/2019 12:58 PM

Docket (Register of Actions)

Birnbaum & Godkin, LLP et al. v. Superior Court for the County of San Mateo

Division 4

Case Number A156945

Date	Description	Notes
04/11/2019	Filing fee.	paid via TrueFiling
04/10/2019	Filed petition for writ of:	petition for peremptory writ of prohibition and request for immediate stay (discovery order 4/11/19 at 10:00) proof of service attached
04/10/2019	Exhibits lodged.	Volume 1 of 3 (pages 1-280)
04/10/2019	Exhibits lodged.	Volume 2 of 3 (pages 281-516)
04/10/2019	Exhibits lodged.	Volume 3 of 3 (pages 516-646)
04/17/2019	Filed document entitled:	"RESPONSE TO PETITION FOR PEREMPTORY WRIT OF PROHIBITION OR OTHER APPROPRIATE RELIEF, AND REQUEST FOR IMMEDIATE STAY";
04/17/2019	Filed document entitled:	"APPENDIX TO REAL PARTY IN INTEREST FACEBOOK, INC.'S RESPONSE TO PETITION FOR PEREMPTORY WRIT OF PROHIBITION OR OTHER APPROPRIATE RELIEF, AND REQUEST FOR IMMEDIATE STAY VOLUME 1 OF 3 RA1 - RA131";
04/17/2019	Filed document entitled:	"APPENDIX TO REAL PARTY IN INTEREST FACEBOOK, INC.'S RESPONSE TO PETITION FOR PEREMPTORY WRIT OF PROHIBITION OR OTHER APPROPRIATE RELIEF, AND REQUEST FOR IMMEDIATE STAY VOLUME 2 OF 3 RA132 - RA453";
04/17/2019	Filed document entitled:	"APPENDIX TO REAL PARTY IN INTEREST FACEBOOK, INC.'S RESPONSE TO PETITION FOR PEREMPTORY WRIT OF PROHIBITION OR OTHER APPROPRIATE RELIEF, AND REQUEST FOR IMMEDIATE STAY VOLUME 3 OF 3 RA454 - RA639";
04/17/2019	Filed proof of service.	as to response and supporting docs;

04/19/2019	Order filed.	ORDER ISSUING ALTERNATIVE WRIT OF MANDATE THE COURT*: The court has conducted a detailed review of the petition, the preliminary opposition, and the record. The court has concluded that the superior court erred in denying petitioners' application to stay discovery proceedings pending the ruling on petitioners' motion to withdraw as counsel. Therefore, let an alternative writ of mandate issue commanding the superior court to set aside and vacate its April 2, 2019 order denying petitioners' application to stay discovery, and to enter a new and different order staying discovery until such time as petitioners' motion to withdraw as counsel is decided. The superior court is further directed to hear and decide petitioners' motion to withdraw as soon as practicable. Alternatively, the superior court shall show cause before Division Four of this court why it should not be compelled to vacate its April 2, 2019 order. The superior court is advised that it must give the parties notice and an opportunity to be heard before issuing a new order in response to the alternative writ. (See <i>Brown, Winfield & Canzoneri, Inc. v. Superior Court</i> (2010) 47 Cal.4th 1233, 1250, fn. 10 ["if a trial court is considering changing an interim order in response to an alternative writ, it must give the respective parties notice and an opportunity to be heard."].) The alternative writ is to be issued, served, and filed on or before April 19, 2019, and shall be deemed served when copies are sent by the clerk of this court to all parties and to the superior court. On or before April 29, 2019, petitioner shall inform this court in writing whether the superior court has complied with the alternative writ, and shall serve and file any new notices, orders or other documents issued or filed by the superior court. If the superior court complies with the alternative writ, this court will promptly discharge it and summarily deny the petition as moot. Otherwise, a written return to the alternative writ shall be served and filed on or before May 10, 2019. Petitioner may file a reply within seven (7) days of the filing of the return, and the matter will be heard before Division Four of this court when ordered on calendar. * Pollak, P.J., Streeter, J., and Tucher, J.
04/19/2019	Alternative writ or OSC issued.	alt. writ;
04/19/2019	Letter brief filed.	Petitioner: Birnbaum & Godkin, LLP Attorney: James A. Murphy Petitioner's Letter Reply Brief
04/29/2019	Filed letter from:	James A. Murphy; dated 4.29.19; status ltr.;

[Click here](#) to request automatic e-mail notifications about this case.

CERTIFICATE OF SERVICE

I, Tyra M. Singleton, declare:

I am a citizen of the United States, am over the age of eighteen years, and am not a party to or interested in the within entitled cause. My business address is 88 Kearny Street, 10th Floor, San Francisco, California 94108.

On May 1, 2019, I served the following document(s) on the parties in the within action:

**BIRNBAUM & GODKIN, LLP'S OBJECTION TO COURT SETTING DISCOVERY
CONFERNECE ON MAY 3, 2019**

XX	VIA MAIL: I am familiar with the business practice for collection and processing of mail. The above-described document(s) will be enclosed in a sealed envelope, with first class postage thereon fully prepaid, and deposited with the United States Postal Service at San Francisco, California on this date, addressed as listed below.
XX	VIA E-MAIL: I attached the above-described document(s) to an e-mail message, and invoked the send command before 5:00 PM to transmit the e-mail message to the person(s) at the e-mail address(es) listed below. My email address is TSingleton@mpbf.com

Stuart G. Gross
Benjamin H. Klein
Gross & Klein LLP
The Embarcadero, Pier 9, Suite 100
San Francisco, CA 94111
Email: sgross@grosskleinlaw.com;
bklein@grosskleinlaw.com

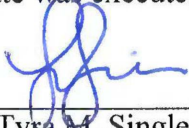
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James Kruzer
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Email: godkin@birnbaumgodkin.com;
kruzer@birnbaumgodkin.com

1 **Joshua Lerner**
2 **Sonal N. Mehta**
3 **Laura E. Miller**
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8 **Jack Russo**
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12 **Donald Sullivan**
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San Francisco, CA 94105
E-mail: donald.sullivan@wilsonelser.com

16 I declare under penalty of perjury under the laws of the State of California that the foregoing is
17 a true and correct statement and that this Certificate was executed on May 1, 2019.

18
19 By 
Tyra M. Singleton